



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 4750-99

14 July 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 July 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.
naval service.

The Board found that you enlisted in the Naval Reserve for six years on 20 September 1977 and were ordered to active duty for three years on that date. The record reflects that you then completed recruit and seaman apprenticeship training. You served without incident until 29 January 1978, when you were reported in an unauthorized absence (UA) status. You remained absent until you surrendered to military authorities 214 days later on 30 August 1978. You were issued technical arrest orders and directed to report to Naval Station, Norfolk for disciplinary action no later than 1200 on 31 August 1978. However, you failed to report as of 1800 on that date and were reported UA. You were declared a deserter on 2 December 1978.

The record further reflects that you were apprehended by civil authorities on 20 February 1980 and charged with armed robbery

and use of a firearm in a felony. On 7 July 1980 you were sentenced to five years in prison for armed robbery, which was suspended, and one year for use of a firearm. You were given credit for time served and two years of probation upon release from jail. You were released to military authorities on 13 August 1980.

While pending special court-martial, you went UA twice from 18-19 August 1980 and 13-26 September 1980. Although the discharge processing documentation is not in your record, it does reflect that on 14 November 1980, the discharge authority approved your request for discharge under other than honorable conditions in lieu of trial by court-martial for four periods of UA totalling 894 days and absence from your appointed place of duty. You were discharged under other than honorable conditions on 17 November 1980.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and the fact that it has been nearly 20 years since you were discharged. The Board noted your contention that at the time of your discharge, you were ignorant and immature kid with personality and character flaws which led you to make stupid mistakes resulting in a lifetime sentence of mediocrity. The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of your discharge, given the serious nature of your civil conviction and the fact that you accepted discharge rather than face trial by court-martial for four periods of UA totalling more than 29 months. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now. A Federal Bureau of Investigation report obtained by the Board noted that your post-service conduct has been marred by convictions for possession and distribution of cocaine, entry after deportation, flight to avoid prosecution, impersonating an officer, and vehicle theft. The Board thus concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board.

In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director